

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #9	CCRB Case #: 202008260	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 06/01/2020 3:00 AM	Location of Incident: In front of 440 Broadway in Manhattan; Inside 440 Broadway in Manhattan	Precinct: 05	18 Mo. SOL 12/1/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 12/08/2020 3:59 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 12/08/2020 3:59 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Stephanie Alba	19604	958228	042 PCT
2. POM Christophe Radzinski	17537	959105	042 PCT
3. POM Paul Polintan	10834	956175	042 PCT
4. SGT Ruben Arroyoperez	01181	947892	042 PCT
5. SGT Derek Pasolini	03070	954217	069 PCT
6. POM Jairo Asilis	19790	958268	042 PCT
7. POM Buddhadeb Biswas	25570	962259	069 PCT
8. POM Frankie Tong	06999	966887	069 PCT
9. POM John Orourke	12156	965378	069 PCT
10. POM Abdelhai Sahel	05775	957120	069 PCT
11. POM Tony Tan	19407	968152	069 PCT
12. POM Nicholas Obrien	05390	965379	069 PCT
13. PO Anna Midyushko	08914	957858	069 PCT
14. PO Viviana Segovia	21202	959217	069 PCT
15. LT Steven Vansoest	00000	943909	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: Inside 440 Broadway in Manhattan, an officer struck an individual with an asp/baton.	
B. An officer	Force: Inside 440 Broadway in Manhattan, an officer struck an individual with an asp/baton.	
C. Officers	Force: In front of 440 Broadway in Manhattan, officers struck § 87(2)(b) with an asp/baton.	
D. Officers	Force: In front of 440 Broadway in Manhattan, officers used physical force against § 87(2)(b)	

### Case Summary

On December 17, 2020, Robert Balin, of Davis Wright Tremaine, LLP., filed this complaint on behalf of § 87(2)(b) and individuals.

On June 1, 2020, at approximately 3:00 a.m., § 87(2)(b) and § 87(2)(b) each a photojournalist documenting the 2020 Police Brutality Protests, were standing in front of the Footlocker at 440 Broadway in Manhattan, when they observed (a) 69<sup>th</sup> Precinct officer(s) inside of the Footlocker utilize asp strikes against two unidentified individuals (**Allegations A and B: Force – Nightstick as club, § 87(2)(g)**).

Officers from the 42<sup>nd</sup> Precinct arrived and formed a line in front of the Footlocker entrance. § 87(2)(b) and other photojournalists were on the edge of the sidewalk, just off the street, when 42<sup>nd</sup> Precinct officers allegedly rushed forward and struck them and pushed them with asps/batons (**Allegation C: Force – Nightstick as club, § 87(2)(g)**) (**Allegation D: Force – Physical force, § 87(2)(g)**).

Ultimately, multiple civilians that were inside the store were arrested and removed for processing.

The investigation verified the arrest of three civilians a result of this incident, each for burglary in the 3<sup>rd</sup> degree (**Board Review 01**). The investigation did not obtain BWC footage related to this incident because the 69<sup>th</sup> Precinct officers' cameras ran out of battery and the 42<sup>nd</sup> Precinct officers were not required to use their BWC as per the Patrol Guide. The investigation obtained surveillance video footage from Footlocker (**Board Review 02**) (**Board Review 03**). § 87(2)(b) provided approximately 100 still photos she captured on the evening in question (**Board Review 04**).

### Findings and Recommendations

#### **Allegation (A) Force: Inside 440 Broadway in Manhattan, an officer struck an individual with an asp/baton.**

#### **Allegation (B) Force: Inside 440 Broadway in Manhattan, an officer struck an individual with an asp/baton.**

It is undisputed that on the night in question, there were protests around New York City that involved serious property damage. It is also undisputed that a large number of protestors broke into and looted the Footlocker at 440 Broadway.

While in the vicinity of 440 Broadway in Manhattan, § 87(2)(b) was documenting the 2020 Police Brutality protests (**Board Review 05**). Leading up to 3:00 a.m., a Footlocker store was broken into and people were taking merchandise inside. At around 3:00 a.m., § 87(2)(b) saw at least four or five NYPD officers arrive and go into the store. When she approached the store front, she saw officers inside “beating” an individual in attempt to arrest him. She was not able to further describe the force used. She was not able to give context as to the individual’s actions before and while the officers were using force. § 87(2)(b) stated she was not able to provide the details because she was focused on getting still shots through her camera.

At approximately 2:40 a.m., while documenting the 2020 Police Brutality protests as a photojournalist, § 87(2)(b) saw individuals compromise a security gate in front of 440 Broadway in Manhattan (**Board Review 06**). After focusing elsewhere, he saw officers arrive 20 minutes later. Approximately three to four officers went into the store, and while inside, they surrounded one civilian. The officers were attempting to apprehend the individual and utilized their asps to do so. When asked, § 87(2)(b) stated that he saw officers raising batons over their heads and bring them down on the individual. He was not able to provide any additional contextual details.

Searches of the NYPD’s Booking and Arraignment Disposition System (BADS) identified three individuals arrested on June 1, 2020, inside 440 Broadway for an incident that occurred at 3:00 a.m., by Police Officer Nicholas O’Brien and Police Officer John O’Rourke, both of the 69<sup>th</sup> Precinct (**Board Review 01**). The investigation made attempts to contact § 87(2)(b)

§ 87(2)(b)

. The parties were not cooperative with the investigation.

The investigation obtained video surveillance footage from the Footlocker Field Investigations team (**Board Review 02**). For the first 10 minutes of the nearly 35-minute video, many civilians are depicted entering, stealing from, and exiting the Footlocker. Between the 10:00 and 10:40 VLC timestamps, NYPD officers are seen interacting with two civilians. At the 10:00 mark, as officers walk past a closed door, an individual exits the door and two officers attempt to grab hold of the individual. While the video is highly pixilated, the individual seemingly does not immediately surrender and actively attempts to evade the officers. A third officer enters the frame seconds later and begins to strike the individual with what seems to be a baton or an asp. Additional officers approach to assist at the 10:10 mark, and after they do, motions consistent with continued asp/baton strikes are not clearly seen.

In the same video, at the 10:33 mark, a second individual is depicted exiting the same door as the first individual. Officers' approach to apprehend that individual and they all engage in a push/pull struggle, resulting in officers and the civilian going to the ground out of the frame of the video.

§ 87(2)(g)

§ 87(2)(b)

provided a series of photos capturing the incident in question (**Board Review 07**). The investigation determined that the photos depict the officers' interaction with the second individual that emerges from the right-side doorway in the store. Beginning at § 87(2)(b) 36592," an individual is depicted emerging from the right-side doorway inside the store and into the arms of an officer, determined by the investigation to be Police Officer Buddhadeb Biswas, of the 69<sup>th</sup> Precinct. In § 87(2)(b) 36594," an officer depicted behind PO Biswas has his arm raised. § 87(2)(b) 36595" to § 87(2)(b) 36600" depict the same officer raising his arm above his head and bringing it down multiple times. Upon reviewing § 87(2)(b) 36595" versus § 87(2)(b) 36596" and § 87(2)(b) 36597," the investigation determined that a long, dark object is in the hand of the officer raising and bringing down his arm. The individual is depicted actively resisting and attempting to evade arrest, ultimately pushing PO Biswas backward onto his back and ending up on top of PO Biswas; at which point, officers converge and work to apprehend the individual. The pictures do not capture officers using additional asp/baton strikes after the civilian goes to the ground.

The investigation interviewed the four members of the 69<sup>th</sup> Precinct who arrived at 440 Broadway to address the looting and could have been the officers who used the force in question. Police Officer Frankie Tong, Police Officer Tony Tan, Police Officer Abdelhai Sahel, and PO O'Brien each stated that they did not use asp/baton strikes against the civilians inside the store and they did not see any other officer do so (**Board Review 08**) (**Board Review 09**) (**Board Review 10**) (**Board Review 11**).

Sergeant Derek Pasolini, also of the 69<sup>th</sup> Precinct, stated he observed an officer utilize asp/baton strikes against the second individual who pushed and fell on top of PO Biswas, but he did not know which officer did so (**Board Review 12**). At the conclusion of the interaction, he contacted Lieutenant Steven Vansoest of the 50<sup>th</sup> Precinct, who was assigned as the team's supervisor at the time of this incident and informed him what happened, including the fact that asp/baton strikes were used. Lieutenant Vansoest told him that a Threat, Resistance, or Injury report did not need to be prepared.

**NYPD Patrol Guide 221-01 (Board Review 13)**. Force may be used when it is reasonable to ensure the safety of others, place a person in custody, and/or prevent the escape of an individual. In assessing whether force is reasonable, officers should consider the nature of the circumstances, whether the subject is actively resisting and/or attempted to evade arrest, presence of hostile crowds, number of subjects to officers, and factors known about the subject.

§ 87(2)(g)

**Allegation (C) Force: In front of 440 Broadway in Manhattan, officers struck § 87(2)(b) with an asp/baton.**

**Allegation (D) Force: In front of 440 Broadway in Manhattan, officers used physical force against § 87(2)(b).**

§ 87(2)(b) stated that as she observed officers interacting with civilians inside the Footlocker, four NYPD officers arrived at the location and lined up in front of the store entrance (**Board Review 05**). She, § 87(2)(b) and other photojournalists moved away from the storefront to the edge of the sidewalk just before the street. As she continued to take photos with her camera, without any prior instruction or warning, the four officers “lunged” forward at the photojournalists. § 87(2)(b) was struck in the face and somewhere else she could not define with an asp. § 87(2)(b) did not observe any other civilian be struck by the asps/batons but stated that the officers were swinging their asp/baton indiscriminately.

§ 87(2)(b) further stated that she did not see who struck her with the asp because she was looking at her camera when it happened but believed that it was a female officer who did so (**Board Review 05**). § 87(2)(b) stated that she was struck just before she took the photo titled § 87(2)(b) – 36640” and the first photo she took was titled § 87(2)(b) – 36641” (**Board Review 04**). She pointed out that Police Officer Stephanie Alba of the 42<sup>nd</sup> Precinct was the only officer standing in a different position between the two photos, therefore she believed that PO Alba struck her with the asp/baton.

§ 87(2)(b) stated that approximately five officers arrived to assist the officers inside the footlocker, which they did by forming a line in front of the storefront (**Board Review 06**). While he was standing at the edge of the sidewalk with a crowd of photojournalists, officers “rushed” them. He explained that he was pushed with an asp/baton off the sidewalk; however, he was looking into his camera when it happened, so he did not see which officer did so. No instructions or commands were given prior to the officers taking the action.

§ 87(2)(b) added that § 87(2)(b) was also pushed off the sidewalk onto the street; however, when he looked at her, she was bleeding from her lip. He did not see what happened to her.

The investigation obtained video surveillance footage from the Footlocker Field Investigations team (**Board Review 03**). Of the many angles provided, no cameras were positioned on the outside of the store; however, there was a camera on the inside facing the front of the store. The video from that camera does capture NYPD personnel; however, the quality was poor and did not assist in the investigation.

PO Alba stated that she did not use her asp/baton to strike any civilian in front of Footlocker or at any point during the evening (**Board Review 15**). She did not recall stepping toward civilians and pushing them with her asp in front of the Footlocker, and she did not recall seeing any other officer do so.

Police Officer Paul Polintan, also of the 42<sup>nd</sup> Precinct, did not recall the incident in question (**Board Review 16**). Sergeant Ruben Arroyo-Perez did not utilize his baton against civilians while in front of 440 Broadway that evening and he did not see any other officer do so (**Board Review 17**). None of the 69<sup>th</sup> Precinct officers who were inside the store saw NYPD officers outside of the store utilize an asp/baton against any civilian.

§ 87(2)(g)

## Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 18**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 19**).

## Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming mental anguish, emotional distress and suffering, psychological injuries, violation of his constitutional rights, and other injuries and seeking \$1,000,000 as redress (**Board Review 20**). § 87(2)(b)
- According to the Office of Court Administration (OCA), § 87(2)(b)
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**Board Review 14**).

Squad: 09

Investigator:	<u>Wassim Abedrabbo</u>	<u>SI Wassim Abedrabbo</u>	<u>1/19/2022</u>
	Signature	Print Title & Name	Date

Squad Leader: Monique West      IM Monique West      1/20/2022  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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